

# JURISDICTION, VENUE, SERVICE & NOTICE PROBATE - TRUST

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# JURISDICTION

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- Definition: *JCW v. Wyciskalla*, 275 S.W.3d 249 (Mo. 2009).
- Subject Matter Jurisdiction: State law
- Personal: Federal Constitution
- Jurisdictional Competence: Authority – Particular Judgment in Particular Case

# JURISDICTION

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- Subject Matter/Authority
  - Limited Jurisdiction
  - Justiciable
  - Invoked
- Personal
  - In rem
  - In Personam
  - Both

# LIMITED JURISDICTION COURTS

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- ENGLAND: EQUITY v. LAW
- PROBATE COURTS: Limited Jurisdiction
- EXAMPLE: Missouri pre-1976 Const. Amendment
- TRUST v. PROBATE: *See 472.020 RSMO*

# PROBATE – LACK OF AUTHORITY

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- *State ex. rel. Wratford v. Fincham*, 521 S.W.3d 710 (Mo. App. 2017).
- Claimant of Decedent Estate bringing direct action (not in estate) against attorney-in-fact and persons in possession of decedent's assets



# PROBATE – UNIFIED COURT SYSTEM

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- *Estate of Heiman*, 241 P.3d 161 (Kan.App. 2010)(Kansas Court unification of 1977 means that the district court has SMJ over all matters, such that if a civil matter (Chapter 60) is improperly filed as a probate matter (Chapter 59) the Court still has SMJ and should not dismiss for lack thereof). Note: Court stated SMJ is authority of particular court to hear a particular case.

# PROBATE – CONCURRENT AUTHORITY

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- *Washington v. Conley*, 734 N.W.2d 306, 273 Neb. 908 (Neb., 2007)(Neb. Constitution provides district courts with broad SMJ in common law and chancery and the Neb. Legislature gives exclusive original jurisdiction in probate matters to the county court. Both courts had SMJ relating to claim of ownership of real estate titled in name of decedent, and first filed action retains the original jurisdiction).

# TRUST – LACK OF AUTHORITY

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- *In re Estate of Falck*, 672 N.W.2d 785 (Iowa, 2003)(Trustee's collateral challenge to SMJ of probate court over claim against Trustee went to the authority of the Court to enter a particular judgment in a particular case rather than SMJ such that the judgment allowing the claim could not be collaterally attacked).



# REMEDY: DISMISSAL V. TRANSFER

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- *Kleim v. Sansone*, 248 S.W.3d 599 (Mo 2008) (transfer proper remedy if filed in incorrect division).
- *Wratchford*, 521 S.W.3d at 717.n3 (neither party has suggested transfer or shown transfer is proper remedy or where transfer would be appropriate).

# UNIFORM TRUST CODE

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- **[SECTION 203. SUBJECT-MATTER JURISDICTION.**
- (a) The [designate] court has exclusive jurisdiction of proceedings in this State brought by a trustee or beneficiary concerning the administration of a trust.
- (b) The [designate] court has concurrent jurisdiction with other courts of this State of other proceedings involving a trust.]

# TRUST CODE

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- **SECTION 201. ROLE OF COURT IN ADMINISTRATION OF TRUST.**
- (a) The court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.
- (b) A trust is not subject to continuing judicial supervision unless ordered by the court.
- (c) A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and an action to declare rights.

# CASES – JURISDICTION COURTS

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- *Acree v. Acree*, 2012 WL 5873578 (Tenn. Ct.App. 2012)(TUTC...203 provides Chancery court with subject matter jurisdiction over trusts).
- *Estate of Alexis*, 744 N.W.2d 514 (Neb. Ct.App. 2008)(Neb. UTC 201 authorizes a judicial proceeding regarding interpretation of testamentary trusts).
- *Revocable Living Trust of Mandel v. Lake Erie Utilities Co.*, -- (Ohio Ct.App. 2012)(Ohio's adoption of the UTC 203(b) granted jurisdiction to probate courts to determine claims relating to trust assets).

# JURISDICTION - JUDGES

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- Constitutional authority v. Statutory authority



# JUSTICIABLE CONTROVERSY

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- UTC comments 201 (no actual dispute required)
- No advisory opinions
- *Piccoli v. O'Donnell*, 237 Ariz. 43, 344 P.3d 345 (App. 2015)(*justiciable controversy is an assertion of a right, status or legal relation in which plaintiff has a definite interest and a denial of it by the opposing party*).

# INVOKE JURISDICTION

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- *In re Irrevocable Jack W. Kunkler Trust A*, 246 P.3d 1184 (Utah 2011).
- *Petition to Modify Trust v. Motion to Resign and Fees* (later filed)

# PERSONAL JURISDICTION

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- *Pennoyer v. Neff*, 95 U.S. 714 (1877).
- *International Shoe v. Washington*, 326 U.S. 310 (1945).
- *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478 (1988).

# PROBATE ESTATE

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- In Rem v. In Personam
- Domicile
- Location of Res
- Ancillary Administration

# TRUST ESTATE - UTC

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- **SECTION 202. JURISDICTION OVER TRUSTEE AND BENEFICIARY.**

- (a) By accepting the trusteeship of a trust having its principal place of administration in this State or by moving the principal place of administration to this State, the trustee submits personally to the jurisdiction of the courts of this State regarding any matter involving the trust.
- (b) With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in this State are subject to the jurisdiction of the courts of this State regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of this State regarding any matter involving the trust.
- (c) This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary, or other person receiving property from the trust.



# CASES

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- *Cundall v. U.S. Bank, N.A.*, 822 N.E.2d 481 (Ohio Ct.App. 2007).
- *Fellows v. Colburn*, 34 A.3d 552 (N.H. 2011).
- *In re O'Donnell*, No. 1 CA-CV 11-0261, 2013 WL 709650 (Ariz. Ct.App. Feb. 26, 2013).

# VENUE - PROBATE

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- In Rem
  - Domicile
  - Residence
  - Property (Real v. Personal)

# VENUE – TRUST UTC

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- **[SECTION 204. VENUE.**

- (a) Except as otherwise provided in subsection (b), venue for a judicial proceeding involving a trust is in the [county] of this State in which the trust's principal place of administration is or will be located and, if the trust is created by will and the estate is not yet closed, in the [county] in which the decedent's estate is being administered.
- (b) If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in a [county] of this State in which a beneficiary resides, in a [county] in which any trust property is located, and if the trust is created by will, in the [county] in which the decedent's estate was or is being administered.]

# CASES

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- *Bank of America v. Kanatzar*, 413 S.W.3d 22 (Mo.App. W.D. 2013).

# SERVICE AND NOTICE

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- *Due Process*
  - *In Personam v. In Rem*
  - *State Action*



# MULLANE

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- Where state action threatens property rights, due process requires notice to affected persons "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950).

# SERVICE

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- In personam – must always have personal service to support a personal judgment
- In rem – published notice is sufficient if that if there is no better way to provide service

# WILL CONTEST – PUBLISHED NOTICE

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- *Bosworth v. Sewell*, 918 S.W.2d 773 (Mo. 1996) (failure to provide actual notice to heirs tolled the statute of limitations for a will contest) (decided on statutory grounds).

# NOT STATE ACTION (POPE)

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- *State ex rel Houska v. Dickhaner*, 323 S.W.3d 29 (Mo. 2010)(self-executing probate claim statute of limitations does not invoke state action so does not implicate Due Process concerns).

# STATE ACTION (POPE)

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- *Estate of Austin*, 389 S.W.3d 168 (Mo 2013)(published notice ineffective to defeat probate estate claim because of failure to provide actual notice to purported victim of decedent).



# TRUST CODE – CREDITORS OF SETTLOR

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- Sect. 505 (3) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and [statutory allowances] to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and [allowances].

# MUTC 505

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- .5 – Trustee may publish notice to creditors and bar claims
- See 461.300 RSMo.

# CONCLUSION

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- Authority of Court
- Due Process